

## **Assembly Bill No. 1392**

### **CHAPTER 594**

An act to amend Section 44237 of the Education Code, relating to school employees.

[Approved by Governor September 18, 1998. Filed  
with Secretary of State September 21, 1998.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1392, Scott. School employees.

Existing law prohibits a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level from employing a person who has been convicted of a violent or serious felony, as defined. Existing law requires the Commission on Teacher Credentialing to deny an application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony, as defined, a sex offense, as defined, and a controlled substance offense, as defined.

This bill would additionally prohibit a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level from employing a person who would be prohibited from employment by a public school district by the provisions of the Education Code because of his or her conviction for any crime. The bill would prohibit a person who would be prohibited from employment by a public school district, because of his or her conviction for any crime, from owning or operating a private school that offers elementary or high school instruction on or after July 1, 1999. The bill would exempt a parent or legal guardian working exclusively with his or her child or children.

This bill would incorporate changes in Section 44237 of the Education Code proposed by AB 2102, to be operative only if AB 2102 and this bill are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 44237 of the Education Code is amended to read:

44237. (a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is not

currently licensed by another state agency that requires a criminal record summary, to submit two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation.

(b) (1) As used in this section, “employer” means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) This section does not apply to a parent or legal guardian working exclusively with his or her child or children.

(c) (1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer designated by the applicant submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer designated by the applicant submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer designated by the applicant submitting the fingerprints by first-class mail. If the employer designated by the applicant submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant.

(d) An employer shall not employ a person until the Department of Justice completes its obligations as set forth in this section.

(e) (1) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(g) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(h) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(j) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(k) The Department of Justice may charge each applicant for a criminal record summary a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

SEC. 2. Section 44237 of the Education Code is amended to read:

44237. (a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid credential issued by the Commission on Teacher Credentialing or is not currently licensed by another state agency that requires a criminal record summary that directly relates

to services provided in a facility described in this section and has background clearance criteria that meets or exceeds the requirements of this section, to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.

(b) (1) As used in this section, “employer” means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) As used in this section, “employment” means the act of engaging the services of a person, who will have contact with pupils, to work in a position at a private school at the elementary or high school level on or after September 30, 1997, on a regular, paid full-time basis, regular, paid part-time basis, or paid full- or part-time seasonal basis.

(3) As used in this section, “applicant” means any person who is seriously being considered for employment by an employer.

(4) This section does not apply to a secondary school pupil working at the school he or she attends or a parent or legal guardian working exclusively with his or her child or children.

(c) (1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward information regarding criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the employer submitting the fingerprints. If the employer submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information.

(3) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether an applicant for employment has a conviction, or

an arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. The Department of Justice shall provide written notification to the private school employer only as to whether an applicant for employment has any convictions, or arrests pending final adjudication, for any of these crimes.

(d) An employer shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section.

(e) (1) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(g) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(h) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(j) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(k) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall



be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(l) The Department of Justice may charge a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(m) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(n) All information obtained from the Department of Justice is confidential. Agencies handling Department of Justice information shall ensure the following:

(1) No recipient shall disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

SEC. 3. Section 2 of this bill incorporates amendments to Section 44237 of the Education Code proposed by both this bill and AB 2102. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 44237 of the Education Code, and (3) this bill is enacted after AB 2102, in which case Section 44237 of the Education Code as amended by AB 2102, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

